

STATE OF IOWA  
DEPARTMENT OF COMMERCE  
BEFORE THE IOWA UTILITIES BOARD

IN RE:	
REVIEW OF COGENERATION AND SMALL POWER PRODUCTION RULES [199 IAC CHAPTER 15]	DOCKET NO. RMU-2016-0006

**STATEMENT OF POSITION**

The Office of Consumer Advocate (“OCA”), a division of the Iowa Department of Justice, files its Statement of Position in response to the Order Requesting Stakeholder Comment on Potential Rule Changes issued July 19, 2016 (“Order”). As a part of a comprehensive review of its rules, the Board seeks to identify and eliminate rules that are outdated, redundant, inconsistent or incompatible with statute or other administrative rules. This rule-making also addresses stakeholder input received in Docket Nos. NOI-2015-0001 (wind and renewable energy tax credits) and NOI-2014-0001 (distributed generation). This rule-making also includes changes arising out of HF 2468, adopted in the most recent legislative session, which amended Iowa Code chapter 476C (“renewable energy tax credit”).

OCA’s comments on the proposed rule changes of concern are set forth below, in the order listed in the Notice of Intended Action dated July 19, 2016 and attached to the Order in this docket. If a particular item number has not been addressed below, OCA has no objection to the proposed amendment as set forth in the Notice of Intended Action. OCA adheres to its previous comments in Docket Nos. NOI-2015-0001 and NOI-2014-0001.

**Item 1. Amend rule 15.1**

OCA is uncertain of the purpose for defining “Equity interest” as proposed in 199 IAC 15.1(i) and would like to consider comments by other participants in formulating its position on this proposed definition.

**Item 3. Amend rule 15.3**

The proposed amendment would transfer the reporting of all information required under this rule and 18 CFR 292.302 to a utility’s annual report. Data submitted by an electric utility under 18 CFR 292.302 is subject to review by the State regulatory authority which has ratemaking authority over such electric utility.<sup>1</sup> The proposed amendment would only change the frequency and location of reporting currently required.

OCA has no objection to the proposed change in reporting frequency. It is possible that the reporting of this information in a utility’s annual report would make this information more accessible to cogeneration and qualifying facility customers. However, much of the information required under this rule is filed by the utilities on a confidential basis and can include a significant number of lengthy documents. It is not clear that this type of content would be desirable for an annual report filing. The proposed rule would necessitate the filing of confidential versions of annual reports specified in 199 IAC Chapter 23, and the redacting of information could impact the transparency intended in the annual report filing. Given that the information reported under this rule is subject to regulatory review and often contains confidential information, OCA believes that the current reporting process should be retained.

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<sup>1</sup> 18 CFR 292.302(e); *see also Midwest Renewable Energy Projects LLC, v. Interstate Power and Light Co.*, Docket No. 199 IAC 15.3 (PURPA Section 210), “Order Requiring Amendments to PURPA Report and Tariffs,” (IUB, Dec. 21, 2007).

**Item 12. Revise rule 15.12.**

OCA has no objection to the proposed movement of reporting requirements from subrules 15.11(3) and 45.13(2) to rule 15.12, but the substantive contents of the reporting requirements should not be eliminated as proposed. Existing subrule 15.11(3) requires the utility to include in its annual report a listing of “nameplate MW capacity and associated monthly MWH purchased from AEP facilities, itemized by AEP facility.” Existing subrule 45.13(2) requires the utility to file a non-confidential report detailing for the previous calendar year (a) the total nameplate capacity and fuel type of the distributed generation facility, (b) the level of review received (Level 1, Level 2, Level 3, or Level 4), and (c) whether the interconnection was approved or denied. The proposed new rule deletes these requirements and states: “The information to be reported shall be defined by the board in the annual report forms.”

Administrative rules are intended to prescribe policy and describe procedure and practice requirements. No rationale is stated for eliminating the notification to the public of specific reporting requirements. These requirements are not outdated, redundant, inconsistent or incompatible with statute or other administrative rules. There continues to be a substantial public interest in the public reporting of key information regarding distributed generation. Having the requirement in the rules appropriately provides notice to the public and ensures that substantive reporting will occur. The reporting requirements of subrules 15.11(3) and 45.13(2) should be retained.

**Item 19. Revise rule 15.19**

The potential amendments to subrule 15.19(3) are intended to provide the Board’s interpretation of the eligible renewable energy facility ownership limitations found in Iowa Code chapter 476C. OCA would like to consider the views of stakeholders in formulating its position

on these amendments, which it will provide in accordance with the responsive comment period established in this docket.

### **Response to Board Questions**

**1. With regard to subrule 15.5(3), is it necessary to require all rate-regulated utilities to provide for seasonal differential and time of day rates in their tariffs?**

Response: Yes. The rate-regulated utilities themselves provide for seasonal and time of day rates. Seasonal differential and time of date rates for qualifying cogeneration and small power production facilities is therefore essential to ensuring that rates do not discriminate against such facilities, as required by 199 IAC 15.5(1)“b.” The time of day or season during which capacity or energy is available from qualifying facility are factors that shall, to the extent practicable, be taken into account. 199 IAC 15.5(6); 18 CFR 292.304(e).

**2. With regard to subrules 15.17(4)-(5), can the annual reporting requirements contained in the rules be amended such that the annual report can be more useful to those who rely on the report and compiled more easily by the utilities creating the report?**

Response: OCA does not have suggestions at this time regarding modifications to the annual reporting requirements but would like to consider the views of stakeholders in formulating its position on these subrules.

**3. Should the Board adopt an application fee for applications for preliminary eligibility as a renewable energy facility (pursuant to rule 15.19), applications for wind energy production credits (pursuant to rule 15.20) and applications for renewable energy tax credits (pursuant to rule 15.21)?**

Response: OCA lacks sufficient information regarding the rationale for potentially requiring a fee for these applications and the factors that would be relevant to determining the

amount of the fee if required. It is apparent from the detailed requirements in the statutes and rules regarding the applications, however, that the applications place significant demands on the Board's resources. It is also true that the Board is vested with broad general powers to effect the provisions of Iowa Code chapter 476. Iowa Code § 476.2(1). OCA reserves the right to consider the views of stakeholders in formulating additional positions on these rules.

### **CONCLUSION**

OCA appreciates the opportunity to provide the Board these comments addressing the proposed rule amendments in chapter 15 and urges the Board to further refine and amend the proposed rules as suggested herein. OCA will be pleased to participate in any further proceedings the Board may wish to conduct on these proposed rule amendments.

Respectfully submitted,

Mark R. Schuling  
Consumer Advocate

/s/ Jennifer C. Easler  
Jennifer C. Easler  
Attorney

/s/ Craig F. Graziano  
Craig F. Graziano  
Attorney

1375 East Court Avenue  
Des Moines, Iowa 50319-0063  
Telephone: (515) 725-7200  
E-mail: [IowaOCA@oca.iowa.gov](mailto:IowaOCA@oca.iowa.gov)

OFFICE OF CONSUMER ADVOCATE